

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE **FAX RECEIVED**

DEC 17 2001

Appn. Number: 08/580,493

Appn. Filed: 1995 Dec 29

Applicant: Philippe Berna

PETITIONS OFFICE

**Appn. Title: PROCESS FOR MAKING A VERSATILE CLAMPING DEVICE
DESIGNED TO HOLD OBJECTS WITHOUT DAMAGING THEM, SUCH A
DEVICE AND ITS USE.**

Examiner/GAU: David Bryant/3726

Molières-sur-Cèze, France, 2001, December 15, Sun

RESPONSE TO A DECISION OF THE OFFICE OF PETITIONS DIRECTOR

**Outstanding Filing Receipt Mailed 2001, September 17, received by applicant 2001,
October 8**

**Outstanding Decision of the Director of the Office of Petitions Mailed 2001,
November 19, received by applicant 2001, December 6**

Hon. Commissioner for Patents

Washington, District of Columbia 20231 of this petition

Sir:

**Applicant thanks very much the Director of the Office of Petitions to have
given his documented opinion about applicant's petition filed Mailed 2001, November 8,
despite 37 CFR 1.17 (h) fee was not paid. Indeed no fee was paid because 37 C.F.R.
1.181 (d) does not refer to 37 C.F.R. 1.182 and that there is no appropriate section of 37
C.F.R. 1.181 indicating that a fee would be required for the subject matter of this
petition.**

**Applicant understands the opinion of the Director of the Office of Petitions
since it is in agreement with MPEP 706.07 (h).**

**However applicants respectfully draws the attention of this Director that as a
result of automatic turning a continuing application under old 37 C.F.R. 1.62 into a
CPA under new 37 C.F.R. 1.53 (d) without any warning to applicant, the application
will be published in bad conditions.**

**Firstly, applicant would have had no time given to submit corrections to the
bibliographic information reflected on the filing receipt. These corrections must be
submitted through PAIR at least 12 weeks (as indicated in
<http://www.uspto.gov/web/offices/dcom/olia/aipa/helpfulhints.htm>), or perhaps even at
least 14 weeks (as indicated in
<http://www.uspto.gov/web/offices/dcom/olia/aipa/infoexch.htm> #CF1) before the
projected publication date. The filing receipt is only mailed 14 weeks before the
projected publication date when the earliest priority claim was more than 15 months
before the filing of the application (see
<http://www.uspto.gov/web/offices/dcom/olia/aipa/helpfulhints.htm>), which is the case.
From these 14 weeks must be subtracted the 3 weeks required for the mail to go from
the PTO to arrive to applicant's address in France through the Philippines, which is the**

current way of shipping selected by the PTO to mail to applicant's address. So it remains less than 12 weeks and therefore less than 14 weeks to submit any correction. When mail from the PTO was shipped through Rotterdam to applicant's address, mail arrived only one week after mailing date. Should the applicant's address would be in the USA, the situation would have been the same since the time taken by the USPS for carrying a mail can go from a couple of days to a week, and sometimes more after the events of last September 11th. Perhaps, the PTO Patent Division should do what she advises in her web pages her customers to do: "*communicate via FAX instead of mail*". It is added that no "Application Number for Search" (application number as indicated on the filing receipt is not recognized as such) or "Publication Number for Search" have been provided to applicant for accessing the private side of PAIR. That might have been done for example with the filing receipt. And the confirmation number required for Electronic Filing System Submission was not working for PAIR. So applicant could not submit any corrections through PRIVATE PAIR despite there are inexactitudes in the bibliographic information given in the filing receipt, if only the number of independent claims.

Secondly, there has been no forewarning of the applicant. Applicant discovered only by reading the documented opinion given by the Director of the Office of Petitions that already on 2000, May 15, that a continuing application under former rule 37 C.F.R. 1.62 from him had already been turned into a CPA under new 37 C.F.R. 1.53 (d). Applicant never received from the PTO any statement of this, such as a filing receipt for this CPA. Should applicant would have received a statement of this, he would have investigated the reason of this change. Although he had not yet the access to the Internet personally, he would have found the reason, if only by calling the PTO customer office or the Examiner for an explanation on phone or by going on the Internet from a library. That would have given him an innings to discover what it was in store for the future. It is true that a brief mention of a CPA under 37 CFR 1.53 (d) filed on 2000, May 15 has been made in the Office action mailed on 2000, September 11. After having read the documented opinion given by the Director of the Office of Petitions, applicant checked it. But that did not attract applicant's attention, because his mind was then focused on what as it is normally focused when an Office Action arrives, i.e. on the ground, in the circumstances on the reasons why claims and specifications were objected to. This mention was not as conspicuous as a filing receipt could have been. And the paper regarding publication entitled "NOTICE OF CONFIRMATION NUMBER ASSIGNMENT" received on second semester 2000 was rather misleading and confusing. In applicant's mind, his application was continuously pending since the date it was filed for the first time before the US PTO, i.e. on 1992, September 03. It is well known that the continuing applications, which were filed in succession, were just filed because the examination for one filing fee has been limited to one real action before the final action for the sake of financing the US PTO. They were just filed because the prosecution was closed. In applicant's mind, these continuing applications were artificial. They were called applications, just because the fee to be paid to get the examination continued was just the filing fee. But they were real requests for continuing examination. And applicant thought to find confirmation of this point of view in the fact that this paper was just inviting applicant to apply for voluntary publication of his application, implicitly that in his case the publication was not compulsory. He thought the reason why was the fact his application was a pending application and will still be

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until grant, whatever the number of "continuing applications under rule 37 C.F.R. 1.62" would be necessary till grant.

Very respectfully submitted,

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper of three pages including this one is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Philippe Berna

Philippe BERN A

12/15/01

Signature

Date